

REMARKS

The specification was objected to as failing to provide proper antecedent basis for the claimed subject matter. The specification has been amended to describe that the hand-gripping portion 18 is generally V-shaped. Therefore, the objection to the specification should be withdrawn.

Claims 2-15 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner found claims 2-15 to be objectionable since the preamble cites that the claims are combination claims but there is no combination recited in the bodies of the claims. Claim 15 has been amended to describe the combination of an elongated handle and a ball secured to the handle with the handle and the ball providing a massage device as spelled out in claim 15. It is believed that claim 15 is properly a combination claim since it does claim the combination of the handle and ball. Accordingly, the 35 U.S.C. § 112 rejection should be withdrawn.

Claims 3-4, 6, 8, 11 and 15 were rejected under 35 U.S.C. § 102(b) as being anticipated by Haygood. In the rejection, the Examiner takes the position that Haygood discloses a batting practice device that anticipates a combination massage device comprising an elongated handle (4, 12). Claim 15, and all of the claims depending therefrom, describes that applicant's handle is elongated. Haygood discloses that element 4 is the handle which is connected to a rope 12 by members 6,

1 8 and 10. Thus, the oval-shaped handle 4 of Haygood is not elongated. Accordingly,
Haygood cannot anticipate claims 3-4, 6, 8, 11 and 15 under 35 U.S.C. § 102(b).

5 Claims 2 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable
over Haygood in view of Mitchell. First, as pointed out above, Haygood does not teach
an elongated handle. Secondly, if the element 14 is substituted for the handle 4 of
Haygood, the ball would be connected to the element 14 through the rope 12,
elements 10, 8 and 6. Accordingly, it is believed that claims 2 and 5 define patentable
subject matter.

10 Claims 7 and 9-10 were rejected under 35 U.S.C. § 103(a) as being
unpatentable over Haygood in view of Rodriguez. It is believed that the rejection is not
appropriate, as stated above, inasmuch as the handle 4 of Haygood is not elongated,
as required by the claims. Even if the ball 10 of Rodriguez was substituted for the ball
24 of Haygood, the resultant structure would not comprise an elongated handle
15 secured to a ball, as set forth in applicant's claims. Therefore, claims 7 and 9-10 are
believed to be allowable.

20 Claims 12-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable
over Haygood in view of Mitchell, along with Killion. First, applicant believes that
claims 12-14 are allowable inasmuch as Haygood does not disclose an elongated
handle as required by claims 12-14. The handle 4 of Haygood may be generally flat,
but it is not connected to a ball as required by claims 12-14. Even if the references
were combined, as suggested by the Examiner, a massage device as required by the
claims would not be provided which included an elongated handle connected at one
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1 end to a ball wherein the handle is generally flat, flexible and comprised of a plastic
material. Accordingly, claims 12-14 should be allowed.

5 The foregoing has clearly shown that applicant's massage device is not
anticipated by the prior art nor made obvious by the prior art. Accordingly, it is
requested that the Amendment be entered and that the claims be allowed. In the
event that the Examiner does not allow the claims, it is requested that the Amendment
be entered for purposes of appeal.

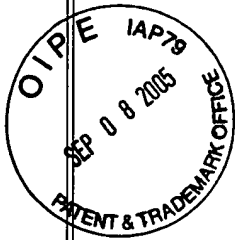
10 No fees or extensions of time are believed to be due in connection with this
Amendment; however, please consider this a request for any extension inadvertently
omitted and charge any additional fees to Deposit Account No. 502093.

Respectfully submitted,



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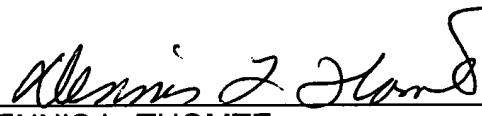


CERTIFICATE OF MAILING

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I hereby certify that the original of this AMENDMENT AFTER FINAL REJECTION for STEWART E. SLOAN, Serial No. 10/827,032, was mailed by first class mail, postage prepaid, to Mail Stop AF, Commissioner for Patents, Alexandria, VA 22313, on this 4th day of September, 2005.

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DENNIS L. THOMTE

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